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9
10 **BEFORE THE**
RESPIRATORY CARE BOARD
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Petition to Revoke Probation Against:

13 MIKA K. SHERMAN, R.C.P.
2388 Worden Street
14 San Diego, CA 92107

15 Respiratory Care Practitioner License No. 21980

16 Respondent.

Case No. R-2015

DEFAULT DECISION
AND ORDER

[Gov. Code, §11520]

17 FINDINGS OF FACT

- 18 1. On or about July 31, 2001, the Respiratory Care Board (Board) issued
19 Respiratory Care Practitioner License No. 21980 to Mika K. Sherman (Respondent).
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- 21 2. On or about July 8, 2004, Complainant Stephanie Nunez (Complainant), in
22 her official capacity as the Executive Officer of the Board, filed an Accusation against
23 Respondent in Case No. R-1916. A true and correct copy of the Accusation in Case No. R-1916
24 is attached as Exhibit A, and is incorporated herein by reference.
- 25 3. On or about June 1, 2005, Respondent signed a Stipulated Settlement and
26 Disciplinary Order in Case No. R-1916, which was adopted by the Board and became effective
27 on August 26, 2005. A true and correct copy of the Stipulated Settlement and Disciplinary Order
28 is attached as Exhibit B, and is incorporated herein by reference. The Stipulated Settlement and

1 Disciplinary Order revoked Respondent's Respiratory Care Practitioner License, stayed the
2 revocation, and placed Respondent on a three-year probation with terms and conditions.

3 5. On or about March 2, 2006, Complainant filed a Petition to Revoke
4 Probation in Case No. R-2015 against Respondent. A true and correct copy of this Petition to
5 Revoke Probation is attached as Exhibit C, and is incorporated herein by reference.

6 6. On or about August 23, 2006, Respondent signed a Stipulated Settlement
7 and Disciplinary Order in Case No. R-2015, which was adopted by the Board on January 4, 2007
8 and became effective on January 15, 2007. This Stipulated Settlement and Disciplinary Order
9 placed Respondent on a three-probation and included the same probation terms and conditions as
10 the pre-existing Disciplinary Order from Case No. R-1916. A true and correct copy of the
11 Stipulated Settlement and Disciplinary Order in Case No. R-2015 is attached as Exhibit D, and is
12 incorporated herein by reference.

13 7. On or about April 9, 2008, Complainant, in her official capacity as the
14 Executive Officer of the Board, filed a Petition to Revoke Probation in Case No. R-2015 against
15 Respondent.

16 8. On or about April 9, 2008, Andrea Pina, an employee of the Board, served
17 by both Certified Mail and by regular first-class mail copies of the Petition to Revoke Probation,
18 Case No. R-2015 on Respondent at her address of record with the Board, which was and is: 2388
19 Worden Street, San Diego, CA 92107. A true and correct copy of the Petition to Revoke
20 Probation, related documents, and Declaration of Service are attached as Exhibit E, and are
21 incorporated herein by reference.

22 9. Service of the Petition to Revoke Probation referenced in paragraphs 7 and
23 8, above, was effective as a matter of law under the provisions of Government Code section
24 11505, subdivision (c).

25 10. On or about May 5, 2008, the aforementioned documents referenced in
26 paragraphs 7, 8, and 9, which were mailed by certified mail, were returned by the U.S. Postal
27 Service marked "Unclaimed." A copy of the envelope returned to the Board by the post office is
28 attached as Exhibit F, and is incorporated herein by reference. The copies of said documents

1 which were mailed by regular first-class mail were not returned to the Board.

2 11 Government Code section 11506 states, in pertinent part:

3 "(c) The respondent shall be entitled to a hearing on the merits if the respondent
4 files a notice of defense, and the notice shall be deemed a specific denial of all parts of the
5 accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
6 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

7 12. Respondent failed to file a Notice of Defense within 15 days after service
8 upon her of the Petition to Revoke Probation and has therefore waived her right to a hearing on
9 the merits of Petition to Revoke Probation No. R-2015.

10 13. California Government Code section 11520 states, in pertinent part:

11 "(a) If the respondent either fails to file a notice of defense or to appear at the
12 hearing, the agency may take action based upon the respondent's express admissions or
13 upon other evidence and affidavits may be used as evidence without any notice to
14 respondent."

15 14. Pursuant to its authority under Government Code section 11520, the Board
16 finds Respondent is in default. The Board will take action without further hearing and, based on
17 Respondent's express admissions by way of default and the evidence before it, contained in
18 Exhibits A, B, C, D, E, F, and G, finds that the charges and allegations in Petition to Revoke
19 Probation No. R-2015, and each of them, separately and severably, are true and correct.

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1 DETERMINATION OF ISSUES

2 1. Based on the foregoing findings of fact, Respondent Mika K. Sherman,
3 R.C.P. has subjected her Respiratory Care Practitioner License No. 21980 to discipline.

4 2. A copy of the Petition to Revoke Probation and the related documents and
5 Declaration of Service are attached.

6 3. The agency has jurisdiction to adjudicate this case by default.

7 4. The Board is authorized to revoke Respondent's Respiratory Care
8 Practitioner License No. 21980 based upon the following violations alleged in the Petition to
9 Revoke Probation:

10 a. Respondent failed to comply with the terms of her drug/alcohol
11 testing program, in violation of Condition Two of her probation in Case No. R-2015.

12 b. Respondent failed to abstain from alcohol, in violation Condition
13 Three of her probation in Case No. R-2015.

14 c. Respondent failed to submit her quarterly probation reports for the
15 quarters ending on September 30, 2007, December 31, 2007, and March 31, 2008, in
16 violation of Condition Six of her probation in Case No. R-2015.

17 d. Respondent failed to claim certified mail sent by the Board to her,
18 including certified mail sent on or about February 5, 2007, April 13, 2007, June 19, 2007,
19 September 13, 2007, November 7, 2007, December 12, 2007, and February 21, 2008, in
20 violation of Condition Seven of her probation in Case No. R-2015.

21 e. Respondent has failed to make past probation monitoring costs of
22 \$600, and she has further failed to pay monthly probation monitoring payments for
23 months from February 2007 through April 2008, and she is currently in arrears \$1,709, in
24 violation of Condition Eight of her probation in Case No. R-2015.

25 f. Respondent has failed to notify the Board of changes in her
26 employment, in violation of Condition Eleven of her probation in Case No. R-2015.

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1 ORDER

2 IT IS SO ORDERED that:

3 (1) Respiratory Care Practitioner License No. 21980, heretofore issued to Respondent
4 Mika K. Sherman, R.C.P., is revoked.

5 (2) Pursuant to Business and Professions Code, section 3753.5, Respondent Mika K.
6 Sherman shall pay to the Board the actual costs of the investigation and prosecution of the case,
7 in the amount of \$3,436.50.

8 Pursuant to Government Code section 11520, subdivision (c), Respondent may
9 serve a written motion requesting that the Decision be vacated and stating the grounds relied on
10 within seven (7) days after service of the Decision on Respondent. The agency in its discretion
11 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the
12 statute.

13 This Decision shall become effective on August 8, 2008.

14 It is so ORDERED July 9, 2008

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17 Original signed by:

LARRY L. RENNER, BS, RRT, RCP, RPFT
PRESIDENT, BOARD OF RESPIRATORY CARE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

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20 sherman_m_default.wpd
DOJ Matter ID: SD2008800509

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22 **Attachments:**

23 Exhibit A: Accusation, Case No. R-1916
24 Exhibit B: Stipulated Settlement and Disciplinary Order, Case No. R-1916
25 Exhibit C: Petition to Revoke Probation, Case No. R-2015
26 Exhibit D: Stipulated Settlement and Disciplinary Order, Case No. R-2015
27 Exhibit E: Second Petition to Revoke Probation, Case No. R-2015
28 Exhibit F: Copy of Returned Mail Envelope, USPS Certified Mail Card, USPS Track &
Confirm
Exhibit G: Certification of Costs: Declaration of Michael S. Cochrane